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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9 SPRING MAY CUSTER,

Case No. 2:19-cv-01633-RFB-VCF

10 Petitioner,

ORDER

11 v.

12 ALLERY K. MARQUEZ-ESPINO, *et al.*,

13 Respondents.

14 **The court notes at the outset that no courtesy copies—except as specified at the**
15 **conclusion of this order—are required in this case at this time.**

16 This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On
17 November 26, 2019, this court granted a stay and administratively closed petitioner Spring May
18 Custer’s federal habeas corpus action while she litigated her state petition. ECF No. 3.

19 Custer states that her state-court proceedings have concluded, and she now returns to this
20 court seeking to reopen this case (ECF No. 5). Good cause appearing, this action is reopened, and
21 the court now sets a further briefing schedule.

22 **IT IS THEREFORE ORDERED** that petitioner’s motion to reopen this action (ECF No.
23 5) is **GRANTED**.

24 **IT IS FURTHER ORDERED**, as the stay is lifted by this order, that the Clerk REOPEN
25 THE FILE in this action.

26 **IT IS FURTHER ORDERED** that respondents file a response to the petition, including
27 potentially by motion to dismiss, within **90 days** of the date of this order, with any requests for
28 relief by petitioner by motion otherwise being subject to the normal briefing schedule under the

1 local rules. Any response filed shall comply with the remaining provisions below, which are
2 entered pursuant to Habeas Rule 5.

3 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this
4 case shall be raised together in a single consolidated motion to dismiss. In other words, the court
5 does not wish to address any procedural defenses raised herein either *in seriatum* fashion in
6 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted
7 from such motion to dismiss will be subject to potential waiver. Respondents shall not file a
8 response in this case that consolidates their procedural defenses, if any, with their response on the
9 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
10 merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
11 do so within the single motion to dismiss not in the answer; and (b) they shall specifically direct
12 their argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406
13 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, shall be
14 included with the merits in an answer. All procedural defenses, including exhaustion, instead must
15 be raised by motion to dismiss.

16 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
17 specifically cite to and address the applicable state court written decision and state court record
18 materials, if any, regarding each claim within the response as to that claim.

19 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the answer,
20 motion to dismiss, or other response to file a reply or opposition, with any other requests for relief
21 by respondents by motion otherwise being subject to the normal briefing schedule under the local
22 rules.

23 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein
24 by either petitioner or respondents be filed with a separate index of exhibits identifying the exhibits
25 by number. The CM/ECF attachments that are filed further should be identified by the number of
26 the exhibit in the attachment.
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DATED: October 8, 2020.


RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE